



November 11, 2022

MEMORANDUM ENDORSED

Christian Cowart
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Hon. Gregory H. Woods
United States District Judge, S.D.N.Y.
500 Pearl St.
New York, New York 10007
Via ECF

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 11/13/2022

RE: Consent Letter Motion for Extension of Time to File Plaintiff's Consolidated Motion [142]

Viahart, LLC v. Creative Kids Online, LLC, No. 1:20-cv-09943-GHW (S.D.N.Y.)

Dear Judge Woods:

We represent Plaintiff Viahart LLC in this Action. With Defendants' consent, we write to request extensions on the upcoming deadline for Viahart's consolidated motion for summary judgment and to dismiss due on November 17, 2022 [ECF No. 142].

Good cause exists for the court to grant Viahart a two-week extension of time to file the Consolidated Motion. Viahart has been diligently preparing its motion with materials supporting facts that cannot be disputed as required by Rule 56. Around the last week of October 2022, Viahart obtained Amazon's production of five excel files containing approximately 44,000 pages of information. This information is relevant to several genuine issues, is highly probative of material facts, and was previously unknown to Viahart.

Moreover, the Parties have been diligently working to resolve several pending issues related to limiting Defendants' affirmative defenses and counterclaims—potentially narrowing the breadth of Viahart's Consolidated Motion.¹ In addition, Viahart's representatives have had limited availability during the past few weeks due to business preparations for the upcoming high sales period around Thanksgiving, Black Friday, and Cyber Monday. These issues have hindered Viahart's ability to finalize the declaration and evidence.

¹ In particular, counsel for the parties have been actively discussing the voluntary dismissal of Defendants' Counterclaim for Declaratory Judgment of Invalidity related to the requested declaration in Paragraph 74 that "plaintiff [*sic*] has no trademark rights in use [*sic*] of the word flakes" Defs.' Countercl. ¶ 74, at 9, ECF No. 94. Viahart seeks voluntary dismissal of the declaratory relief requested in Paragraph 74 because different grounds warrant dismissal of this claim—namely, lack of justiciability to support subject matter jurisdiction. As such, Viahart may have to separately address this relief unless voluntarily dismissed.

On the other hand, Viahart will seek summary judgment of Defendants' Counterclaim for Declaratory Judgment of Non-Infringement related to the requested declaration in Paragraph 75 that "the name 'Creative Kids Flakes' is not confusingly similar with the name 'Brain Flakes.'" *Id.* ¶ 75. Viahart does not seek voluntary dismissal of the declaratory relief requested in Paragraph 75 because the same grounds for summary judgment in Viahart's favor on its claims support summary judgment in Viahart's favor dismissing this relief.



Viahart seeks a 2-week extension of the deadline for Viahart's Consolidated Motion from November 17, 2022 to December 1, 2022. After conferring, Defendants consented to this extension. This is Viahart's first request for an extension on this deadline.

For these reasons, Viahart respectfully request that the Court find that good cause exists for extending the deadline for Viahart to file the Consolidated Motion to December 1st.

Sincerely,

A blue ink signature of Christian J. Cowart, written in a cursive style.

CHRISTIAN J. COWART
Counsel for Plaintiff

cc: All counsel of record (via ECF)

Application granted. The deadline for Plaintiff to file and serve its consolidated motion for summary judgment and motion to dismiss or strike Defendants' affirmative defenses is December 1, 2022. Defendants' consolidated opposition is due within five weeks after service of Plaintiff's consolidated motion. Plaintiff's consolidated reply, if any, is due within two weeks after service of Defendants' consolidated opposition.

The Clerk of Court is directed to terminate the motion pending at Dkt. No. 147.
SO ORDERED.

Dated: November 13, 2022
New York, New York

A black ink signature of Gregory H. Woods, written in a cursive style.

GREGORY H. WOODS
United States District Judge